

NICODEMVS

FOR

CHRIST,

OR

THE RELIGIOUS  
MOOTE OF AN HO-  
NEST LAWYER,

DELIVERED IN A SERMON,

preached at the Assises at Okeham,  
in the County of Rutland, March.

10. 1627.

BY ANTONY FAVVNER, MASTER  
of Arts, and late Student in *Iesus*  
Colledge in Oxford.

IOB. 29. 16.

*I was a father to the poore, and the cause which I knew  
not, I searched out.*

---

LONDON,

Printed by I. L. for Robert Allott, and are to be sold by  
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NICODIMVS  
FOR

CHRIST

OR  
THE RELIGIOUS  
MOOTE OF AN HO-  
WEST LAWYER

DELIVERED IN A SERMON

preached at the  
Church of St. Andrew



1657

BY ALEXANDER LAWRENCE, MASTER  
of Arts, and the student in  
College: 1657

1657

Printed by J. Streater, and the case bound by  
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TO THE VVOR-  
SHIPFVLL MY HO-  
NORED GOOD FRIEND

MOSES TRYON ESQVIRE,

Grace, Mercy and  
Peace.

SIR,



Godly liberality is not  
much different from a  
frugall prouidence; 'tis  
but a letter of Returne,  
by which we shall re-  
ceiue in heauen what  
we haue wisely laid out

on earth: for hee that hath pitie on the  
poore, lendeth vnto the Lord; and looke  
what hee layeth out, it shall be payed him  
again, *Pro. 19. 17*. So that the practise of  
this piety, is the most advantageous vsury:  
for we lend but temporals, but we shall re-  
ceiue both the Principall and Interest in

A 2

Eternals.

## *The Epistle Dedicatory.*

Eternals. Happy might all Gods tempo-  
rall Stewards be, if they would so implo-  
re their golden Talent. Concerning your  
owne particular, I will onely thus much  
say, The prayers of the poore for you  
will sooner present your charity to God  
then the prayes of my Pen can vnto the  
World. And as for the no meane appre-  
hension of your fauour and good mea-  
ning towards my selfe, I can returne no o-  
ther, saue the poore mans tribute, prayer  
and thanks: of which this slender Pre-  
sent, the thinne gleanings of a Country  
Labourer, is a faithfull, though vnpro-  
portioned testimony. Which if you but  
kindly accept, as it is freely offered, you  
shall, *accipiendo dare*, be bounteous in recei-  
uing, and so deserue new thanks abun-  
dantly gratifying him, who alwaies vnfa-  
inedly desires

By you and yours in all Christian  
service to be commanded,

*Anthony Fawceter.*



EGREGIO VIRO  
PETRO TRYON, OR-  
NATISSIMI VIRI MOSIS  
TRYON Armigeri filio natu

maximo



*Ei privata satago: Nec humili  
fortuna competit inuita quo-  
dammodo Lucina, fatum quem  
vix peperisse ausa est in apricum  
seueriori Criticorum fronti ex-  
ponere. Satiùs familiari gra-  
tandum est lari, tutiusque tyro-  
nibus domesticâ declamare in  
porticu. Equidem labentiùs labiorum vitulos fecissem  
in salutem Macenatis quàm literas hasce publicâssem in  
ipsius gratiam; nisi quòd nobis, dignitatem tuam (Ge-  
nerose vir) ai nndapylai istius nostra vectigal iure proprio  
vendicâsse, solutumque parumper in hoc Xenio censu-  
que modico tributum aequi consultam iri, meridianâ lu-  
ce clariùs innotuisset. Ad te ipsum quòd attinet, ne qua  
è casto & sincero deprompta sunt pectore, adulterina  
videantur & fucata adulantis ingenij deliramenta, rem  
paucis expediam. Depositis collo Bullâ Laribusque ad-  
huc sub umbonis candidi privilegio mediâ iuuentute  
egisti virum, adeoque subitaneo virtutis incremento mi-  
nutatim defluentes annorum & ætatis sefellisti moras,*

## Epistola Dedicatoria.

ut praeoce quâdam maturescence indole gradatim quasi  
& pedetentim sequaces Natura gressus praeuenisse videa-  
ris. Mucos ergo emungant proprios rugosa Hypercri-  
ticorum sanna. Vacillans adhuc nostra Theologia solo-  
les hac & decidua, pene dixerim primis infantiæ vagl-  
ens incunabulis, sub tuis modo succreuerit auspicijs,  
abundè mihi videbitur conclamatum tunc, fruaturque  
votis usque ad invidiam felicibus

Sigillatim tuus,

Ex Museo meo vndecimo  
Kalend. Septemb. 1629.

Antonius Fawkner.





# NICODEMVS


## FOR

### CHRIST, &c.

---

Ioh. 7. 51.

*Doth our Law iudge a man before it heare him, and know what he hath done?*

 Aiefty is an embleme of Diuinity, and Magistracy the visible character of an inuisible Deity. So that as men are the best of Mortals, Iudges also are the best of men, and are by so much liker their Creator, by how much his Warrant authorizeth them aboue his creatures. Men indeed are like God by a benefit in their creation: Iudges more like him by the addition to their creation of the prehemineny of their function. Men are like him in the fabrick of their soules, they, more like him, because both in that, and the excellency of their Office. If then *Melancthon* may tearme men Earthly gods, in respect of inferiour creatures, why may not *David* stile Iudges transitory gods, in regard of inferiour men?

men? *I haue said, you are gods*, Psal. 82.6. The Lord indeed is God of gods, but he hath selected these to be gods to men. Yet though God permit them to partake of his Authority, tis with a condition, that they shall partake of his Iustice too. God workes all for his owne glory, and his infinite glory is his infinite Iustice. Now because power is the supporter of Iustice, God makes the great, not because they should be great, but because by being great, they might dare to be iust. Those then whom God makes great, wee deeme to be good, so that their place begets a reuerence; their reuerence, feare; and greatnesse mixt with goodnesse produceth imitation: insomuch that Honour becomes Example, and Iudges liues, the peoples rules. So that they liue not their owne liues alone, but other mens; and the perill of their soules hazzards others. As then there is no deformity so vgly as corrupted beauty, so no Calling so wicked, as the best turned bad. Bad in it selfe, worse by example; worst, if at all bad, because it should be best; most dangerous, because most eminent. *Adam* indeed sinned, yet still continued man; but if Angels transgresse, they can be no lesse then Diuels. Peasants may turne Pagans, and none take notice: but if *Julian* become an Apostata, an Empire is in danger. *Ieroboams* transgression made Israel to sinne; and though the people compell *Aaron* to make an Idoll, yet if he doe it, being a Magistrate, he brings the sin vpon them, Exod. 32.21. *He that beleeueth in me, saith Christ, out of his belly shall flow rivers of waters of life,*



John. 7. 38. An ample reward of the Iewes be-  
 liefe, if they had believed. And (poore soules!)  
 many had believed, had not the example of their  
 Rulers hindred their beliefe. Many resolved that  
 he was the Prophet, Vers. 40. Some confessed he  
 was the Christ, Vers. 41. Yea, and the frozen  
 consciences of the barbarous Officers, which  
 went with a full resolution to arrest him, were so  
 thawed, that, let the Magistrates thinke will or  
 ill, they must needs confesse, that *Never man spake  
 like this man*, Vers. 46. Their consciences acknow-  
 ledged him, their tongues confessed him: yet (for  
 the force of example from Authority!) the wick-  
 ed thinke to stop their mouthes with this owne  
 question, *Doth any of the Rulers or Pharises beleene on  
 him?* Vers. 48. Nay, immediately with open  
 mouth, according to their old fashion of balling  
*Templum Domini, Templum Domini*; The Temple <sup>1st. 17. 4.</sup>  
 of the Lord, The Temple of the Lord: or, *Wee* <sup>1st. 19. 7.</sup>  
*have a Law, and by our Law hee ought to dye*, they  
 would condemne him vntried against the Law:  
 and in the next verse out-law him and his, with a  
 dire Anathema, *Ἀνάθεμα ὁ ὅτι οὐκ οἶσιν τὴν νόμον τοῦ πατρὸς ἡμῶν*. This rout; this  
 Many which know not the Law is cursed, Vers.  
 49. So would they haue sterner the Law by  
 their owne passions, till Nicodemus returns the  
 curse vnto the heads of the cursers, and mauer  
 their bragging of their skill in the Law, conuicts  
 them of iniustice by a question from their owne  
 Law; *Μὴ ἡμεῖς οἱ Ἰουδαῖοι οὐκ οἶσιν τὴν νόμον τοῦ πατρὸς ἡμῶν*  
*ἡμεῖς οἱ Ἰουδαῖοι οὐκ οἶσιν τὴν νόμον τοῦ πατρὸς ἡμῶν*; *Doth our Law iudge a man before  
 we heare him, and know what he hath done?* Not to  
 be

De simili questi-  
one vide Beza  
in S. Mat. 7. 22.

be tediously curious vpon the words. The Verse is such a question, as may be naturally resolved by a Negative position; and that easily done by the Metathesis of the particle interrogative, transferred from the subiect to the implicate Copula: so that *ἡμεῖς οὐκ ἴδμεν, &c.* Doth our Law iudge a man before it heare him, and know what he hath done? is equivalent, and the same with *οὐκ ἴδμεν μὴ ἴδμεν, &c.* Our Law doth not iudge a man before it heare him, and know what he hath done. And my Text so vnderstood, may seeme to be *Solstitium solis iustitie*, The Solstice of Iustice. It must not bee idle, but proceede thus farre: nor is it boundlesse, it proceeds no further. It must iudge, else 'twould not be Iustice: it must iudge within the limits of these conditions, else 'twould be iniustice. The question is already become a position; let vs once againe turne the Negative position to an affirmative proposition; and that not by the dislocation of one Negative particle, but the exemption of them all. If then our Law doth not iudge a man before it heare him, and know what hee hath done; it followes, *à contrarijs*, that our Law doth iudge a man, if it heare him first, and know what he hath done. And the Text thus taken, points at two things, *νόμος* and *κρίτω*; the Law in the first part; Our Law doth iudge a man; and the Iudge in the second; If it heare him before, and know what hee hath done. The first part shewes vs *νόμος ἀκίνητος*, the rule of Iustice, the Law dead without the Iudge. The second points out *νόμος ἐκίνητος*, the liuing Law, the Iudge, corrupt without the Law.



*The righteous moote of an honest Lawyer.*

Law. Againie, the first part containes two things. First, the Rule of Iustice, *ἡ δίκη*, the Law; noted by her coate of difference, *ἡ δίκη ἡμῶν*, our Law, the Jewes Law, Gods Law. Secondly, the act of Iustice, Iudgement, *ἡ δίκη ἡμῶν ἐπὶ τῷ*, Our Law doth Iudge; and that againe attended with its obiect, *circa quod*, *ἡ δίκη* a man. In the second part are evident two especiall necessities to a good Magistrate: The first is diligence, *ἐν ἀσκήσει*, hee must heare; and that both *ἐν ἀσκήσει*, before hee proccede to sentence; and *ἐν ἀσκήσει*, of him that is accused. The second is knowledge, and that both of the fact, and the manner of the fact, *ὅτι γὰρ οὕτως ἐγένετο*: And know what he hath done. Of these (the God of Truth assisting) and first of the first, the Rule of Iustice.

*ἡ δίκη*, The Law.

*Sine lege sunt quæ sine ordine sunt*, saith an Ancient; Order is one end of the Law, God the Author of all Order. Hee might haue created the World as well in one day, as sixe; and all at once as easily, as Heauen first, and Man last: but by his wisdom were all things made, and the God of Order would be the example of Order. Now as all is made, all must be sustained, lest Order should againe be swallowed vp in confusion. So that as all was created in order, all must bee so created, that it may remaine in order. Wherefore God will at once be *κτίστης* and *νομοθέτης*, a Creator and a Lawgiuer; and with the same *Fiat* rouze from confusion and command to obedience. Each creature is so made it selfe, that it cannot be ought

Gilbertus in  
Cantica, lxx. 30.

Philo Iudeus de  
Fabric. Mundi.

saue it selfe. The wisdom of his bounty giues it a Being; the wisdom of his order giues it but one Being. Nor is this order in essence only, but in the consequents of it, its qualities. The nimble fire will be above, and not below; the fullen earth onely below. The two great Lights haue their alternate courses. The Sea may threaten, cannot Domineere; it must overflow so much earth, and but iust so much. Thus the Decree of God checkes all Natures: his Word created by a secret power; his Wisdom gouernes by an eternall Law. *By the Word of the Lord were the Heavens made, Psalm. 33. 6. and he made a Decree for the raine, Job 28. 26.* Now though all things are, and are guided by this eternall Law, yet this *Summa ratio*, (so *S. Augustine* stiles it) this supreme directiue rule, though it bee *aliqua liter* (as the Schooleman limits) in some sort in all creatures subiect to the Diuine prouidence; yet I say more especially, more eminently it shines in man. So that by this more excellent impression of the eternall Law, there followes a participation of that Rule in man; by which hee hath an inbred inclination to the accomplishment of his proper acts and ends. Which participation of the eternall Law is defined to be the Law of Nature. By the light of which wee may easily view what should be done, by our naturall inclination to what wee would doe. God hath made vs to be men, and the nature of men constraines vs to be sociable. Yet is not Nature so blind a guide, nor so vniust a Mistressse, as to command society, and not to instruct

*S. August. de lib. arb. c. 6.*

*Aquin. 12. 1. 92. Art. 2.*





share it to any of his creatures. The second part is morall, instructing vs to liue by the rule of modesty and vertue. The third, Preceptiue, commanding vs to furnish others with the knowledge of our Creator, God, and season them with the precepts of vertue and morality. And so the Gentiles which had not the Law, did by Nature the things contained in the Law, and hauing not the Law, were a Law vnto themselves, Rom. 2. 14. Now because, by reason of the imperfect estate of our depraued nature, our passions will swell to perturbations, and can receiue such strength from the Law of sinne, that they are able impetuously to rebell against the Law of Nature, it is necessary that from the common precepts of Nature (as particular and vnknowne conclusions are drawne from common and apparent principles) mans vnderstanding should deduce and enact other seuerall Canons for the more particular disposition of the community in order: which should deterre those from vice by feare of punishment, whom the instructions of Nature cannot perswade to be good by loue to vertue. And such like particular constitutions drawne from the Law of Nature, which is deriued from the Eternal, receiue a third denomination, distinct from both the former, and are intituled, *Lex Humana*, or *Positiua*, the Humane, or Positiue Law. Such as

Law.

*Rud. Com. Grac.*  
fol. 1033.



Law-giuers, and the acts of men, to which onely they are a rule, they may be termed Humane; yet after iust and due enacting by the authoritie of the publike assent, or publike person, and the open receipt of the after promulgation in the time and place of concourse, as amongst the Athenians, and *in the trinuindino in Fora*, in the open Market place amongst the Romanes; then Religion tels vs, that *Lex* the Law takes its name from its owne *Etymon* *ligando* from binding. So that whatsoever is subiect to the superior power, is consequently subiect to the Law of that power. Which in so much as it partakes (though but mediately and remotely) of the eternal Law, binds the inferior subiects to its obseruance, yea, *in foro conscientie*, by the tye of Religion and Conscience. There is no power but of God, *Rom. 13. 1. Wherefore yett must bee subiect, not because of wrath onely, but also for conscience sake, Vers. 5. By me (saith the Lord) Kings reigne, and Princes decree iustice. By me Princes rule, and the Nobles, and all the Iudges of the earth, Prou. 8. 15, 16. Who soeuer then resists the power, resists the ordinance of God, Rom. 13. 2.* It followes then, that none, no nor the righteous are exempted from obedience to this Humane Law, as it is a directiue Rule, or guiding power; though in respect of its coactiue authoritie they are priuiledged, as preventing compulsion by voluntary obedience. And in this sense indeed the Law is not giuen to righteous men, but to vngodly, *1. Tim. 1. 9.* And Saint Paul may bee an exegetical Commentator on this place in another: For Princes are not to bee feared

*Postellus de  
Magistrat. A-  
then. cap. 5.*

red for good workes, but for euill, *Rom. 13.3*  
 Nor are we onely bound to submit our selues to  
 the iudgement of this Law, but Magistrates are  
 as much required, to frame and proportion their  
 determinations according to this Law. The  
 square then of our actions must bee the rule of  
 their iudgements, and that *Alty. & d. p. i. q. u. a. &* must be as  
 definitiue of their censures as our deeds. *Xenophon*  
 tels, that *Cyrus* learnt of his Tutor, that there was  
 no difference betwixt *Nómu* and *Aíxio*, lawfull and  
 iust, and as little betwixt *Árquos & Ékai*, lawlesse and  
 violent; so that hee seemed to confine Iustice to  
 Law, and would alwaies proceed according to  
 Law, lest at any time he should seeme vniust. Such  
 force then is in the Law, that it binds all processi  
 in Iustice to be according to the Law. So that he  
 which in the administration of iustice strays  
 from the order of the Law is as much an offen  
 dour, as he whom he condemnes as a transgressor  
 of the Law. And therefore the Athenians thought  
 it a small conuenience to their Commonwealth  
 to provide *Nómu*, Law-giuers vnlesse they had  
 also appointed *Nómu*, a sort of superiour Gover  
 nours to receiue an account from the Iudges  
 of their common and ordinarie proceeding  
 according to the Law. *Plato* would haue the  
 Law as a picture, by whose proportion, as by  
 a patterne and exemplar, Magistrates should  
 forme their censures. *Iudex*, the Iudge is but *Im*  
*dicens*, not the maker, but the speaker of the Law;  
*Administrator Iudicij* (as an interpreter of *Philo*)  
 The iudgement is Gods, hee is but the pronoun  
 cer;

*Xenophon* *Κυρ*  
*νομ. β. 6. α.*

*Postellus* de  
*Mag. Athen. c. 6.*

*Plato* de leg.  
*Dial. III.*

*Varro* de ling.  
*Latin. lib. 5.*

*Christoph. interp.*  
*Philon. Iudaei. de*  
*offic. Iudicis.*



cer; and amongst the Romanes, *Suetonius* ranking the most choise and honourable titles which the Emperour *Augustus* bestowed vpon his beloued *Tiberius*, registers *Ducem* *Nepotum* *patris*. That hee was a Gouvernour precisely obseruing the prescript of the Law. And no lesse honour might *Felix* seeme to haue deserued, who would not for fauour deliuer Saint *Paul* to death against the custome of the Romanes, *Act. 25. 16.* And *Ahashuerosh* might haue been an example to them both, not giuing sentence according to his owne angry humour, but the Nations decrees; *What shall wee doe with the Queene Vashti according to the Law? Ester 1. 15.* Sure I am that such a one was *Nicodemus*, who asks not in my Text *Μη κρινεις; Doth the Iudge?* but *Μη ο ραυα κρινει; Doth our Law iudge?* As if the Iudge could not decree, but the Law; or if the Iudge, yet as onely directed by the Law. Or if the Heathenish Romanes, vnder whose dominion they then were subiect, had had such a barbarous Law, as to iudge a man before accused or heard: yet sith the Iewes were vnder the Couenant, and immediately directed by the Law of God, hee inquires further, *Μη ο ραυα κρινει; Doth our Law so?* which is the next considerable.

*Our.*

*The Law of the Lord is an undefiled Law: Psal. 19.*

8. *Moses* might heare it from God, as accepted for holy; *Israel* might heare it onely from *Moses*, as but onely called to bee made holy. *Israel* must not touch Mount *Sinay*, no not touch it lest

they

they die, though it bee to heare the Law, by the performance of which they should liue. Gods Maiesty would promulge it in thunder and darkness, that all might heare and tremble: his Mercy would ingraue it in Tables of stone, that all might see and reioyce. Here *Ius Gentium* becomes *Ius Iudaicum*, and the inuiolable decree of Nature made stronger by the promulgation of God. False witnesse is a fault against Nature, yea, and a sinne against God. *Thou shalt not beare false witnesse against thy neighbour: Exod. 20. 16.* God is truth; falsehood is his enemy. *God is Iudge: Psal. 50. 6.* And shall not the Iudge of all the World doe right? *Gen. 18. 25.* No man must be condemned by his Law *indictâ causâ*, his offence not proued; but at the mouth of two or three witnesses the matter must be established: *Deut. 19. 16.* Moses deliuered this Law to the Iewes when they dwelt in tabernacles, and it was yeerely repeated by the High Priest, faith *Iosephus*, at their Feast of Tabernacles. Loe then how malice may peruert Iustice! This Law was deliuered by God to *Moses*, by *Moses* to their forefathers, by the High Priest yeerely with solemnity to themselves, and by themselves daily according to Gods precept to their children, *Deut. 6. 7.* and might not *Nicodemus* then iustly wonder, that being Masters in Israel they knew not this? Let them then but checke their heady choller, or shake off their lingring malice, and they may through halfe-closed eyes perceiue, that God forbids false-witnesse; not witnesse. Probabilities indeed may be the ground of a suspicion, but they must

*Ioseph. de Antiq.  
Ind. lib. 4. c. 8.*



must proue ere they can iudge; which is the next  
considerable, *ut si quis iudex iudicet, Doth our Law-Iudge,*  
*etc.* *ut iudex iudicet.*

*Virtus à vi*, say the Latine Critickes, *apud* from  
as the Greekes. Both Rome and Sparta so ho-  
noured warlike prowesse, that they esteemed it  
as the Soueraigne of Vertues: yea, so much, as  
that they would haue the name of Vertue in ge-  
nerall to bee deduced from strength and warre.  
Yet *Agésilas*, a Spartan Prince, no lesse honoura-  
ble for Prowesse then Iustice, would notwithstan-  
ding measure his greatnesse by Iustice, not Prow-  
esse. For hearing some name the Persian Monarch  
according to his affected title, *Myas Paotia*, the Great  
King, he taunts the swelling title by a question of  
comparison, *τι οὐκ ἔστιν ἰσχυρότερον τῆς δικαιοσύνης;* *Plat. Ambr. 3. 7.*  
*I pray you in what can he be greater then my selfe,*  
*if he appeare neither wiser, nor iuster.* And although  
hee knew well enough which way the streame  
would goe in the Lacedemonians iudgements,  
honouring valour aboue all vertues, yet being de-  
manded which was the Nobler, Fortitude or Iu-  
stice, he gaue sentence on Iustices side, and shew-  
ed his reason in his answer, *ὅτι ἀνδρεία φύλαξ τῆς δικαιοσύνης;* *Plat. Ambr. 3. 7.*  
*Fortitude is but the guard of Iustice; and were*  
*there no Traytors that would violate her, we needed no*  
*valour to maintaine her.* Saint *Ambrose* makes  
good her excellency by comparing, if not prefer-  
ring her to another vertue, of no lesse eminencie  
in a Christian, then valour in a Spartan; Benefi-  
cence.

cence. Diuiding the whole frame of humane society into two parts, Iustice and Beneficence, of the two (saith he) *Iustitia mihi excelsior videtur, Liberalitas gratior: illa censuram tenet, illa bonitatem.* They are not vnlike the two sisters, *Leah* and *Rachel*; Birth-right preferres the one, Nature the other: Iustice is royall, Liberality beautifull. A Scepter becomes the one, Mercy adorne the other: Authority is the Crowne of Iustice, Bounty, of Liberality. *S. Bernard* anatomizeth Iustice somewhat more curiously; diuiding her, not as a sister from Beneficence; but as the whole into her two parts, Beneficence and Innocency. Now saith he, *Innocentia Iustitiam inchoat, Beneficentia consummat.* To doe no wrong is the beginning of Iustice; to doe right the perfection. It begins in Innocency, it ends in Charity. So that *Agessitatus* his *τὸ δὲ τὸ ἀνέχον* To abstaine from oppression, was but Iustice in its Innocency: it must be the *Summum quique tribuere*, to giue each man his due: to helpe the oppressed that can crowne it with Beneficence. And indeed Iustice in this her perfection, is the Queene of Vertues, excelling all the rest, by how much a common good which she onely respects, exceeds a priuat, or personall, in which the acts of all, (at least, the most of all) the rest are terminated. But this Theame of Iustice is too large a field to runne ouer in the few remaining minutes of an houre: wherefore we will passe by it to view, and but view its act, Iudgement. Briefly then, the Learned haue as sufficiently, as concisely determined, and confined iust Iudgement vnto three

Bern. Serm.  
paru. Ser. 11.

Xenophon, λόγ.  
ὁ δὲ ἀνέχον.

Aquin. 2. 2. q. 60.  
art. 2.



three conditions; by the defect of any of which, the Iudgement becomes vnlawfull. First, it must be according to the rule and square of Iustice; otherwise it is peruerse, and so vniust. *Iudicium Iustum iudicate*; Iudge righteous iudgement: *Iob. 7. 24.* Secondly, it must proceed from iust authority; else it is vsurped, and then the party accused may iustly demand of such a Iudge, as the Egyp- tian did vniustly of *Moses*, *Quis te constituit Iudicem, &c.* Who made you a Iudge ouer vs? *Exod. 2. 14.* For he can haue no power, except it be giuen him from aboue: *Iob. 19. 11.* Thirdly, it must be *secundum rectam rationem prudentie*, by the appro- bation of reason and prudence: else if it proceed from suspicion or doubtfull, and not manifest proofes, it is vnlawfull, because rash. And in that sense our Sauour forbids vs at all to iudge: *Matth. 7. 1.* and the Law in my Text agrees with the Gospell; *Doth our Law iudge a man before it heare him, and know what he hath done.* But because this may seeme to conduce to the office of the Iudge, it may leade vs to the second part of my Text, the second necessary requisites to a good Magistrate. Which because according to the Apostles grant, I may exhort an Elder as a Father, I will touch: *1. Tim. 5. 1.* and againe, lest by a rude petulancy, or indiscreet presumption, I might seeme, against the Apostles rule, to rebuke an Elder, I will but touch, and so draw to an end. First then of the first; *audiam*, hee must heare; the Iudge must

Heare.

The order of Nature in the manner of our sen- *Diligence.*

C 3

sitiue

sitiue knowledge seemes to me to be a patterne of the order of Iustice in Iudgement. Let then common sense be Queene in the part sensitiue, the vtmost confines of the world of man. The outward senses are the witnesses infallibly presenting their obiects vnto her; of which after euidence presented from them, and not before, she can onely iudge. Tis easily applied by the termes in the similitude. Tis the witnesse that condemnes the man, the Magistrate can but iudge after witnesse; yet must he make diligent search: *Deut. 19. 18.* He must stop one eare with *Alexander* against the witnesses, and reserue it for him that is *accused*, and stands accused. Neither must he only heare, but heare *nap aut*, from him. His cares must not bee in his hands, that so by receiuing bribes, against the rules of Nature and Iustice, he should confound Hearing with Feeling. *Quomodo potest esse iustus alteri, qui studet eripere alteri quod sibi querat?* Saint *Ambrose* would faine haue been resolued how it could possibly be, that a couetous man should bee iust, sith his care is onely to enrich himselfe, no matter by whose goods. Wherefore Gods command is, that they take no gifts, *Exod. 23. 8.* Again, neither must his eares bee in his eyes, when hee reades any of my great Lords letters, either to the fauour or preiudice of the prisoner. *Cato* was not more seuerer then iust, when he would haue *Iudicem nec pro Iustis orandum, nec pro iniustis exorandum*: A good Magistrate neede not be intreated to fauour the guiltlesse, and should not be ouerintreated to succour the guilty. Wherefore if for feare

*Ambr. de offic.  
lib. 1. cap. 28.*



feare of any great Ones the Magistrate peruert  
Iustice, hee is in Iosephus opinion iniurious to the  
Almighty, and blasphemous against God. *Quasi*  
*verò* (saith he) *is infirmior sit habendus quam illi, quo-*  
*rum potentia metu, prater ius fertur calculus. Nam*  
*Dei potentia est iustitia.* Gods Iustice is his Power;  
they then which lesse feare to oppose it, then dis-  
please men, feare men more then God, and conse-  
quently esteeme them greater then God. Not  
may the poore, if guilty, claime a pittie. It is due  
to his aduersitie, not to his sinne. *Qui autem sua*  
*sponte se obstringit sceleribus, is non infelix sed iniustus*  
*consensus est.* Hee which voluntarily mancipates  
himselſe to iniquitie, must not be pittied because  
poore, but punished because wicked. So Philo Ju-  
deus instructs and receiues his warrant from the  
Lawginer; Neither shalt thou countenance a poore  
man in his cause: *Exod. 23. 3.* Yee must therefore  
decree according to Gods iudgement,  
*1. Pet. 1. 17.* and according to his command; Re-  
spect not any person: *Deut. 16. 19.* Againe, hee must  
not onely heare from him that is accused,  
but also before hee proceed to sentence.  
Not according to that barbarous custome repor-  
ted of Clagen, a Towne in Carinthia, where vpon  
suspicion they condemne the man, and after trie  
the carcase: but according to the laudable man-  
ner of the Romanes mentioned in holy Writ; *It*  
*is not the manner of the Romanes for fauour to deliuer*  
*any man to death, before he that is accused, haue the ac-*  
*cusers brought before him, and haue place to defend*  
*himselfe concerning the crime, Act. 25. 16.* But of  
this

*Ioseph. Antiq.*  
*Iud. lib. 4. cap. 38*

*Philo Iud. de of-*  
*fic. Iudicis*

*Sel. Munster.*  
*Cosmog. de Un-*  
*garia.*

Budaus com.

Graec. fol. 1349.

Aristot. Eth.

5.6.15.

Aristot. Eth.

5.6.15.

Esth. I. 19.

Briffonius de  
Regibus Pers.  
lib. 1.Tertul. Apol.  
aduers. Gent.  
cap. 4.Hugo Cardin  
Eccles. 7. 18.

this before. To returne then: *Budaus* notes two other significations of *ἀνέμω*. The first is, *Interpretari*, to interpret. Notwithstanding, indeed the Law written hath been heretofore said to bee *ἡ τοῦ νόμου*, for the most part the guide of Iudgement; yet because mens actions by their seuerall multiplicity may seeme to bee infinite, and from thence may arise sundry particular cases, which the Law in its generall mandates seemes not directly to aime at, nor foresee, by reason of diuers circumstances, perchance extenuating the nature of the fact, it would seeme harsh, that these should be censured by the rigour of the letter. Wherefore in the Iudges breast there may rest an *ἰσχυρὴ* or middle equity, tempering Iustice by the milder interpretation of her Law, lest shee should seeme seuerer, yea, euen to iniury: yet so proportioning the Law to the fact, that it may not seeme violated, but mitigated; not neglected, but perfected. *Artaxerxes* could not recall his sentence by the Persian Law, but hee would oft-times aswage it, cutting off the head-tyre for the head. And no lesse humanity was in the Emperour *Seuerus*, whom *Tertullian* testifies, *Suffundere maluisse sanguinem quam effundere*; Hee had rather punish *rubore*, then *morte*, by shame then death; and it was esteemed a better tempered iustice for a light offence, by a blush of shame to bring the blood into the offenders face, then by the axe of execution to spill it on the ground. And this equity the Preacher approoues, by disallowing its contrary; *Be thou not iust ouermuch*: Eccles. 7. 18.

he



he shewed his reason in the precedent verse; *For there is a iust man that perisheth in his iustice: Vers. 17.*

The other sense of *intelligere* is *Intelligere* to vnderstand, or know which leades me to the next generall requisite to a good Magistrate:

*Knowledge.*

How necessary knowledge is to a Iudge, may *Knowledge.* bee somewhat euident by the meaning of the word *iudex* in my Text, which is to Iudge; but hath a neerer signification, *secerno*, to sepearate, or diuide one thing from another by election or refusall, which intimates a knowledge. After God had promised *Salomon* his request, *1. King. 3. 5.* he answers by asking in the ninth verse, *Giue vnto thy seruant an vnderstanding heart, that I may discerne betweene good and euill.* Wherefore because experience is the mother of knowledge, and age most grounded in experience, the Iewes Gouvernours were the Elders of their Cities. Not vnlike which Magistracie, was the Athenians *republica*, not to bee better expressed then by a third example, the Romans Senate. But, not to walke vpon this beaten track, my Text briefly appoints two things most especially to be knowne. The first is *quid*, what it is that is done; whether an easie slippe, or a foule transgression; and (as *Hugo Cardinalis* comments) *Hugo Card. in S. Job. 4. 7. v. 51.* *ad quem finem*, for what intention, for that measures the action. The second, *quid*, what is done, in act, not intention, for that makes the intention compleate. But the time checkes. A word of exhortation, and so an end.

Though I doubt not (Right Honourable) that  
D your To the Iudge  
Iustice Hntion

your wisdom may prevent my admonition, yet I know a vocall warning, especially from a Pulpit, the Oratory of God, hath its special force and peculiar energy. *Philip* of Macedon knew well enough that he was a man, yet he would every day be told so. Wherefore I beseech you, and not onely you, but all the inferiour Iudges, euen to Iurours, and the like, to whom the whole scope of my Sermon is as applicable, as vnto your selfe, that you will beare a few words of exhortation. They are but a few. To day is *Dies Criticus*, a blacke and gloomy day of Iudgement: a little Doomesday, a type of the great one. When yee therefore iudge, consider with your selues seriously these few particulars. First, what you are that iudge. Sure youle blush when you call to minde: Dust of dust, a clayie lumpe, a heape of ashes. *Terra terram iudicat*, Earth iudgeth earth. Now yee are gods, but you shall die like men: to day you take away life, to morrow you may lose your owne. Nor are you exempted from the common lot of humane misery. Now is the prisoners course, very shortly may bee the best of ours. If then you peruert iustice while the statte is in your hand, expect a deserued misery; *in die* *indignorum opera*, God will punish you, *legē talionis*, by a iust Law of *paritie*. *Va qui pradaris*, &c. Woe vnto thee that destroyest: *When thou hast made an ende of doing wickedly, they shall doe wickedly against thee: Esay 33.1.*

Goe too then, grind the face of the poore; accept persons in iudgement, oppresse the widdows and

(1)  
Psal. 82.6, 7.

Нѣм. Ватрохо-  
мωομωχ.

to put him in remembrance



and fatherlesse crying for iustice; shed innocent blood. But stay, and heark, the Preachers trumpe summons thee before God by a fearefull *Scito*; *Know that for all this thou shalt come to iudgement: Eccles. 11.9.* Thou mayest indeed kill the innocents body, but *ex ore tuo condemnaberis*, thy sentence shall rebound, and by a mortall recoyle pierce thine owne soule. Secondly, consider in (2) whose place you sit. In the seat of God, the iust God, and the mercifull God. Sing therefore with *David* in your actions both mercy and iudgement vnto the Lord. Destroy betimes all the wicked out of the land: *Psal. 101.8.* yet be mercifull also as your Father is mercifull: *Luk. 6.36.* Thirdly, remember in whose presence you iudge: (3) againe, in the sight of God, a iust God, a iealous God, a terrible God, a God that will auenge vnto the third and fourth generation. Harken then vnto the caueat of *Malachies memento*; Remember yee the Law which he commanded, with the Statutes and Iudgements: *Malach. 4.4.* For it is a fearefull thing to fall into the hands of the liuing God: *Heb. 10.31.* Neither deceiue your selues with a vaine secrecy, saying, The Lord shall not see, nor the God of *Iacob* regard. Shall not he which planted the eare heare? or he which formed the eye, shall not he see? His eyes are ten thousand times brighter then the Sunne; darkenesse is to him as the noone-day; yea, the righteous God searcheth the heart and reines: *Psal. 7.9.* Iustice is Gods honour, and the Lord is iealous of his glorie. If therefore you transgresse, hee will surely find it

Χενοφ. Ἀπομνη-  
μονεύματα  
6.6.8.

Wisd. 16. 15.

out. The offendours indeed of mans Law may escape the punishment, saith the Heathen *Xenophon*) οἱ μὴ λαιδαίνοντες, οἱ δὲ ἐλαττωμένοι, some by a priuiledged greatnesse; some by a subtile priuacy: but they that transgresse against Gods Law, must needs vndergoe the censure, Ἡ δὲ τοῦ Θεοῦ τιμωρία ἀνθρώπων διαφυγῆν, (as the same Author) which a man can

by no meanes auoide: for it is impossible to escape Gods hand. Can any hide him in secret places, that I shall not see him, saith the Lord? Do not I fill Heauen and Earth, saith the Lord? *Ier.*

23. 24. If therefore yee are rebellious, and companions of theeues, euery one louing gifts, and following after rewards; if yee iudge not the fatherlesse, neither suffer the widowes cause to come vnto you, Thus saith the Lord, the Lord of Hosts, the mighty One of Israel; Ah, I will ease me of mine aduersaries, and bee auenged on mine

(4) enemies: *Isai.* 1. 23, 24. Fourthly and lastly, thinke seriously whom you iudge: the answer to which brings me to a point in my Text, hitherto of purpose ouer-passed, that the Law and Iustice might bee handled together. Τὸν ἀνθρώπου, *A man.* • καὶ νόμου ἡμῶν κρίνεις ὁ ἀνθρώπου, &c. *Doth our Law iudge*

*A man? &c.*

*A man? Nec amplius dicam, nec opus est;* I can say no more, nor neede I. A man; the Image of God; a walking world; the worke of a Trinity: *Let vs make Man, Gen.* 1. 26. A man: thy brother the begotten sonne of thy naturall father *Adam*; thy brother, the politique sonne of thy Ciuill Father,



ther, the Prince; and againe, thy brother, the adopted son of thy heauenly Father, God. *Vespasian* had a combat betweene his Office and Nature: *Iustis supplicijs illachrymavit & ingemuit*, as *Suetonius*; He was an Emperour, therefore must needs iudge and condemne; he was a man too, and therefore by as great a necessitie hee must sigh and pitie. Learned *Athens*, was not void of a morall pietie, and euen that is alwaies attended with mercy. Their chiefe seate in their *2<sup>nd</sup> Basilica*, their iudgement-hall was *Aede Iulianu, Iouis liberatoris*: Their chiefe God was their pardoning God; the crowne of soueraignty is mercy. Holy Scripture honours it as much, nay more, making it a title of the true God, yea, and that a great title, for, *His mercies are aboue all his workes*. Himselfe will bee stiled, *Pater misericordiarum*, the Father of mercies, *2. Cor. 1. 3*. And to induce vs *Patrizare*, to bee like our Father in an easie clemency, he leaues vs mercy as an inheritance, and reward of our mercy: *Blessed are the mercifull, for they shall obtaine mercy: Matth. 5. 7*. Yet, as man indeed beares the Image of his Creator, and ought therefore to bee seriously tried before condemned; so also a notorious malefactor beares the marke of Satan: hee hath defaced the Image of God in himselfe, and ought therefore to bee punished. Vice corrupts his Nobilitie, sinne depriues him of pitie; *Thine eye shall not spare him: Deut. 19. 13*. For he which iustifieth the wicked, and he which condemneth the iust, euen they both are an abomination to the Lord, *Prou. 17. 15*. To conclude. Blessed is that soule which

*Suet. in Vespas.  
Postellus de  
Mag. Athen.  
cap. 25.*

Bern. de Aduen.  
Dom. Serm. 3.

can be the seate of God. Which is that, saith Saint Bernard? Himself answers, The soule of the iust: for iustice and iudgement are the establishment of his Throne: Psalm. 89. 14. Doe iustice therefore in these three things; *Redde superiori, Redde inferiori, Redde aquali, cuique quod debes & dignè celebras aduentum Christi parans in Iustitiâ sedem suam*: Giue to thy superiour, giue to thy inferiour, giue to thy equall; to euery of them what is their due: so shalt thou religiously welcome the graces of God into thy heart, and thy selfe in iustice bee established the holy Temple of God. Where if thou prepare him a residence in this life, hee will provide an eternall mansion for thee in his new Ierusalem of the World to come, whither hee of his infinite mercy bring vs.

Amen.

Deo Trino Vni Gloria.



FINIS.

Errata.

In the Latine Epistle, the second page, line 4. for *sololes*, r. *soboles*. p. 3. l. 9. r. *well*. l. 12. r. *lee*, p. 5. in the marg. r. *Gillibertus in cantic. Serm. 30.* p. 10. l. 7. r. *equib* &.



